

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RENE MALDONADO, } NO. CV 23-188-DDP (AGR)

Petitioner,

L. MARTINEZ, Warden, } ORDER TO SHOW CAUSE WHY
Respondent. } PETITION FOR WRIT OF
HABEAS CORPUS SHOULD
NOT BE DISMISSED

Petitioner has filed a Petition for Writ of Habeas Corpus by a Person in State Custody (“Petition”), pursuant to 28 U.S.C. § 2254, challenging denial of resentencing. On the face of the Petition, it appears the sole ground in the Petition fails to state a cognizable claim for relief.

1 I.
2PROCEDURAL HISTORY

3 In January 2006, a Los Angeles Superior Court jury found Petitioner guilty
 4 of two counts of attempted murder and two counts of being a felon in possession
 5 of a firearm (Cal. Penal Code §§ 187(a), 664, & 12021(a)(1)). (Dkt. No. 1 at 2,
 6 197-98¹ (Case No. PA045406).) The jury also found true the allegations that the
 7 attempted murders were committed willfully, deliberately, and with premeditation;
 8 that a principal personally and intentionally used and discharged a firearm within
 9 the meaning of Cal. Penal Code §§ 12022.53(b), (c), (e)(1); and that all crimes
 10 were committed for the benefit of a criminal street gang. (*Id.*) In addition,
 11 Petitioner admitted to having suffered a prior conviction for a serious or violent
 12 felony and admitted one prior one-year enhancement within the meaning of (Cal.
 13 Penal Code § 667.5(c)). On February 28, 2006, the court sentenced Petitioner to
 14 two consecutive terms of fifty-years to life. (Dkt. No. 1 at 2, 200-02.)

15 On January 22, 2007, the California Court of Appeal reversed one count of
 16 being a felon in possession of a firearm and ordered Petitioner to be resentenced.
 17 (See <https://appellatecases.courtinfo.ca.gov> (Case No. B189920).) On April 11,
 18 2007, the California Supreme Court denied a petition for review. (See *id.* (Case
 19 No. S150426).)

20 On remand, the Superior Court reversed one of the felon in possession of a
 21 firearm convictions (Count 3), recalculated pre-sentence credits, and clarified
 22 Petitioner's sentence. (Dkt. No. 1 at 206.) It appears that Petitioner did not
 23 appeal but pursued various forms of collateral relief. (See
 24 <https://appellatecases.courtinfo.ca.gov>.)

25 On December 20, 2007, the California Court of Appeal summarily denied a
 26 habeas petition filed on November 29, 2007. (See *id.* (Case No. B203990).) On

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28 ¹ Page citations are to the page numbers generated by the CM/ECF
 system in the header of the document.

1 June 25, 2008, the California Supreme Court summarily denied a habeas petition
 2 filed on January 14, 2008. (See *id.* (Case No. S159921).)

3 On February 22, 2018, the California Court of Appeal granted Petitioner's
 4 writ of mandate challenging the imposition of a gang enhancement pursuant to
 5 Cal. Penal Code § 186.22 and remanded to the trial court for resentencing. (See
 6 *id.* (Case No. B287354.) On remand, the trial court resentenced Petitioner to life
 7 without the possibility of parole plus a twenty-year determinate sentence for the
 8 firearm enhancement (Cal. Penal Code §§ 12022.53(c), (e)(1)) for each
 9 attempted murder count, with the fourteen years minimum eligibility term for each
 10 attempted murder count under the "Three Strikes" law. The trial court ordered
 11 the sentences to run consecutively. (Dkt. No. 1 at 211-13.) Petitioner appealed
 12 and, on July 30, 2019, The Court of Appeal affirmed the conviction but once
 13 again remanded the matter for the trial court to impose or strike the Cal. Penal
 14 Code § 667.5(b) prior prison enhancement. (See *People v. Maldonado*, Case
 15 No. B292272.)

16 Relevant here, on July 31, 2020, Petitioner filed a request for resentencing
 17 pursuant to Cal. Penal Code § 1170.95² in the Superior Court. (Dkt. No. 1 at
 18 176.) On August 26, 2020, the court summarily denied the petition and found
 19 Petitioner ineligible for resentencing on two separate grounds: (1) Petitioner was
 20 not convicted on the theories of felony murder or natural and probable
 21 consequences; and (2) § 1170.95 does not apply to convictions for attempted
 22 murder. (*Id.* at 229-34.)

23 On June 16, 2021, the California Court of Appeal affirmed the denial of
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25 ² Effective January 1, 2019, California Senate Bill No. 1437 (2017-2018
 26 Reg. Sess.) (Stats. 2018, ch. 1015: Senate Bill 1437) substantively amended
 27 certain sections of the California Penal Code to eliminate the natural and
 28 probable consequences liability for murder as it applies to aiding and abetting.
 and to otherwise limit the scope of the felony-murder rule. It also added section
 1170.95 to the Penal Code, enabling those convicted under the theory of felony
 murder or murder under the natural and probable consequences doctrine to
 retroactively seek relief.

1 resentencing in an unpublished decision. (See
2 <https://appellatecases.courtinfo.ca.gov> (Case No. B203783).)

3 On August 25, 2021, the California Supreme Court granted a petition for
4 review and deferred the matter pending disposition of related issues in *People v.*
5 *Lopez*, S258175. (See *id.* (Case No. S269959.) On December 28, 2021, the
6 matter was transferred to the Court of Appeal with directions to vacate its
7 decision and reconsider the cause in light of Senate Bill No. 775.³ (See *id.*)

8 On February 14, 2022, the California Court of Appeal affirmed the denial of
9 resentencing. (See *id.* (Case No. B308783).) The court held that Petitioner was
10 not eligible for resentencing because he was not convicted of attempted murder
11 based on felony murder, the natural and probable consequences doctrine, or any
12 other theory of liability under which malice was imputed to him based solely on
13 his participation in a crime. The court also found that denial of a request for
14 appointment of counsel was harmless error. (Dkt No. 1 at 153-61.)

15 On April 20, 2022, the California Supreme Court denied a petition for
16 review. (See *id.* (Case No. S273666).)

17 Petitioner constructively filed the current Petition on January 5, 2023. (Dkt.
18 No. 1 at 240 (proof of service).)

19 **II.**

20 **FEDERAL HABEAS REVIEW STANDARD**

21 The Petition was filed after enactment of the Antiterrorism and Effective
22 Death Penalty Act of 1996 (“AEDPA”). Therefore, the Court applies the AEDPA
23 in reviewing the Petition. See *Lindh v. Murphy*, 521 U.S. 320, 336 (1997).

24 A federal court may not grant a petition for writ of habeas corpus by a
25 person in state custody with respect to any claim that was adjudicated on the
26 merits in state court unless it (1) “resulted in a decision that was contrary to, or

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28 ³ California Senate Bill No. 775 amended Cal. Penal Code § 1170.95 to
allow persons convicted of attempted murder to petition for resentencing.

involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States”; or (2) “resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d); *Harrington v. Richter*, 562 U.S. 86, 98 (2011).

11

DISCUSSION⁴

The Petition contains one ground for relief. Petitioner contends that the Superior Court erred in denying his petition for resentencing under Cal. Penal Code § 1170.95 without appointing counsel and allowing proper briefing in violation of Petitioner's rights to due process and assistance of counsel. (Dkt. No. 1 at 5.)

Federal habeas review is limited to deciding whether a judgment violates the Constitution, laws, or treaties of the United States. See *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991). Generally, a claim involving only the application or interpretation of California law is not cognizable on federal habeas review. See 28 U.S.C. § 2254(a); see also *Rivera v. Illinois*, 556 U.S. 148, 158 (2009) (citation omitted) (An error of state law alone “is not a denial of due process.”).

A. Last Reasoned Decision

For purposes of habeas review, the last reasoned state court decision is the California Court of Appeal decision dated February 14, 2022 on remand from the California Supreme Court and not the Superior Court's decision on August 26, 2020. (Dkt. No. 1 at 153-61.) See *Ylst v. Nunnemaker*, 501 U.S. 797, 803 (1991); see also *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018). The California Supreme Court directed the Court of Appeal to reconsider in light of Senate Bill

⁴ The Court assumes, without deciding, that denial of a petition for resentencing under Cal. Penal Code section 1170.95 petition constitutes a new intervening judgment.

1 775. *People v. Maldonado*, 2021 Cal. LEXIS 9025 (2021). As the Court of
2 Appeal noted on remand, Senate Bill 775 became effective January 1, 2022, and
3 allowed persons convicted of attempted murder to petition for resentencing. (Dkt.
4 No. 1 at 154 & n.2.) The Superior Court had issued its decision on August 26,
5 2020, before Senate Bill 775, and had held that resentencing relief was not
6 available for attempted murder convictions under the then-existing version of §
7 1170.95. (*Id.* at 155-56.) The Superior Court's decision was also issued before
8 the California Supreme Court's decision in *People v. Lewis*, 11 Cal. 5th 952, 957
9 (2021), which held that a petitioner is entitled to counsel as a matter of state law
10 upon the filing of a facially sufficient petition and that a petitioner alleging error
11 must show that it is reasonably probable his petition would not have been denied
12 summarily without an evidentiary hearing if he had been appointed counsel.
13 (Dkt. No. 1 at 160-61.)

14 Petitioner was represented by counsel, who submitted briefs, during the
15 proceedings before the California Court of Appeal and California Supreme Court.
16 (*Id.* at 10-119, 126-44, 146-52, 163-71.)

17 The California Court of Appeal held that Petitioner is not eligible for
18 resentencing as a matter of law under § 1170.95 after Senate Bill 775 because
19 he was not convicted of attempted murder based on felony murder, the natural
20 and probable consequences doctrine, or any other theory of liability under which
21 malice was imputed based solely on his participation in a crime. (*Id.* at 154.)
22 There is no such crime as attempted felony murder, and the judge did not instruct
23 the jury on the natural and probable consequences theory of aiding and abetting.
24 (*Id.* at 157, 158-59.) Rather, “the trial court instructed the jury that it could not
25 convict [Petitioner] as an aider and abettor unless the jury concluded that
26 [Petitioner] shared the perpetrator’s intent.” The instructions required that the
27 prosecution prove beyond a reasonable doubt that “[w]hen the defendant acted’
28 he acted with malice aforethought,” which required “intent to kill.” Accordingly,

Petitioner “was convicted based on his own state of mind, not on any theory of imputed malice.” (*Id.* at 159.)

The California Court of Appeal also held that the trial court erred under state law in failing to appoint counsel for Petitioner under the subsequent decision in *Lewis*. The California Supreme Court in *Lewis* held that there is no federal constitutional right to counsel to pursue collateral relief from a state conviction. *Lewis*, 11 Cal. 5th at 972-73. Under state law, a petitioner who contends he was erroneously deprived of counsel in connection with a § 1170.95 petition must show prejudice, namely, “it is reasonably probable that if [he or she] had been afforded assistance of counsel his [or her] petition would not have been summarily denied without an evidentiary hearing.” *Id.* at 974. The California Court of Appeal found that Petitioner could not satisfy his burden because he “is ineligible for relief as a matter of law” and therefore the error was harmless. (Dkt. No. 1 at 161.) To the extent Petitioner raises appointment of counsel in his Petition in this federal court, his ground for relief is unexhausted. The petition for review before the California Supreme Court did not raise the issue of appointment of counsel. (*Id.* at 163-71.)

B. Failure to State Cognizable Ground for Relief

“There is no constitutional right to an attorney in state post-conviction proceedings.” *Coleman v. Thompson*, 501 U.S. 722, 752 (1991), *abrogated in part on other grounds in Martinez v. Ryan*, 566 U.S. 1, 8, 17 (2012) (holding, when state requires defendant to raise ineffective assistance of counsel at trial claim in collateral proceedings rather than direct appeal, procedural default will not bar federal habeas court from hearing claim of ineffective assistance of counsel at trial if, in initial-review collateral proceeding, petitioner had no counsel or counsel was ineffective).⁵

⁵ The Supreme Court in *Martinez* did not establish a constitutional ruling that would create a freestanding constitutional claim. 566 U.S. at 16.

1 Accordingly, the failure to appoint counsel as provided in Cal. Penal Code §
 2 1170.95 is “state law error only.” *Lewis*, 11 Cal. 5th at 973. “[F]ederal habeas
 3 corpus relief does not lie for errors of state law.” *Lewis v. Jeffers*, 497 U.S. 764,
 4 780 (1990); *Prado v. Cueva*, 2023 U.S. Dist. LEXIS 213226, *6 (E.D. Cal. Nov.
 5 30, 2023) (holding claim based on failure to appoint counsel in § 1170.95
 6 resentencing proceeding is not cognizable on federal habeas review).

7 To the extent Petitioner challenges denial of resentencing, Petitioner must
 8 show that the alleged state sentencing error was “so arbitrary or capricious as to
 9 constitute an independent due process . . . violation.” *Lewis*, 497 U.S. at 780
 10 (1990); *Miller v. Vasquez*, 868 F.2d 1116, 1118-19 (9th Cir. 1989) (question of
 11 whether prior conviction was serious felony within meaning of state statutes does
 12 not raise federal question). A habeas petitioner “may not . . . transform a
 13 state-law issue into a federal one merely by asserting a violation of due process.”
 14 *Langford v. Day*, 110 F.3d 1380, 1389 (9th Cir. 1996).

15 The Petition does not invoke any federal basis for his resentencing
 16 argument and does not show any fundamental unfairness occurred in the state
 17 court’s application of its sentencing laws.⁶ Whether Petitioner is eligible for
 18 resentencing under § 1170.95, and the procedures involved, are issues of state
 19 law not cognizable on federal habeas review. See, e.g., *Wilson v. Corcoran*, 562
 20 U.S. 1, 5 (2010) (“federal habeas corpus relief does not lie for errors of state law”)
 21 *Souch v. Schiavo*, 289 F.3d 616, 622-23 (9th Cir. 2002) (challenge to trial court’s
 22 exercise of discretion under state sentencing law fails to state federal habeas
 23 claim). Federal habeas review does not permit this court to second-guess the
 24 state court’s determination regarding Petitioner’s ineligibility for resentencing.
 25 See, e.g., *Walker v. Cal. Supreme Ct.*, No. CV 22-4638-CAS-E, 2022 WL
 26 11337927, *2 (C.D. Cal. Sept. 13, 2022) (collecting cases), *recommendation*

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 28 ⁶ Any claims based on alleged violations of California Constitution are also
 claims based on state law and are not cognizable on federal habeas review.

1 accepted by 2022 WL 11269388 (C.D. Cal. Oct. 13, 2022). This court is bound
2 by the state court's interpretation of its laws. See *Bradshaw v. Richey*, 546 U.S.
3 74, 76 (2005) (per curiam) ("state court's interpretation of state law . . . binds a
4 federal court sitting in habeas corpus").

5 Accordingly, Petition does not appear to present a claim cognizable on
6 federal habeas review.

7 **IV.**

8 **ORDER**

9 Therefore, the court orders Petitioner to show cause, on or before **March 8,**
10 **2024**, why the court should not recommend dismissal of the Petition with
11 prejudice for the reasons set forth above. If Petitioner does not respond to this
12 Order to Show Cause, the magistrate judge will recommend that the Court
13 dismiss the Petition with prejudice.

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16 DATED: February 5, 2024

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ALICIA G. ROSENBERG
United States Magistrate Judge